



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
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LOS ANGELES, CALIFORNIA 90017

November 30, 2015

Office of the Commander
and District Engineer

The Honorable Raul M. Grijalva
United States House of Representatives
1511 Longworth House Office Building
Washington, D.C. 20510

Dear Representative Grijalva:

I am responding to your letter of October 20, 2015, to Brigadier General Mark Toy, South Pacific Division Commander, regarding your concerns about U.S. Army Corps of Engineers (Corps) related issues within the City of Benson, Arizona. Brigadier General Toy requested that I respond to your concerns. In your letter, you raise the following issues: compliance with section 7 of the Endangered Species Act (ESA), the lack of development of Special Area Management Plans (SAMPs) in Arizona, and the proposed Villages at Vigneto project near Benson. I will discuss each item in turn.

The scope of the Corps' regulatory authority over development projects is limited to the provisions of section 404 of the Clean Water Act (33 U.S.C. § 1344), whereby we regulate the discharge of dredged or fill material into waters of the United States. Corps' decisions on section 404 permit applications qualify as "federal actions" which must also comply with other federal statutes such as the federal ESA. Relying on survey protocols outlined by the United States Fish and Wildlife Service (FWS) to inform biological evaluations, the Corps then determines the presence or absence of federally listed species or their designated critical habitat within the action area. The action area is defined at 50 C.F.R. § 402.2 as "all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action." If listed species or designated critical habitat is present within the action area and the Corps determines the federal action may affect such listed species or critical habitat, the Corps will consult under section 7 of the ESA with the FWS. If no listed species or critical habitat occurs within the action area and the Corps determines the federal action would have no effect to listed species or critical habitat, consultation pursuant to section 7 of the ESA is not required. For effects to listed species outside of the Corps' action area, a developer must first request "Take" (e.g., injury, mortality, harassment, etc.) authorization directly from the FWS pursuant to section 10 of the ESA.

My Regulatory Division has undertaken development of SAMPs in Southern California where specific funding was provided by Congress. National Corps guidance indicates that because SAMPs are labor intensive, the following factors should exist before a district becomes involved in a SAMP: the area should be environmentally sensitive and under strong developmental pressure; there should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests; there should be full public involvement in the planning and development process.

Additionally, all parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product. To date, there has not been an area in Arizona with all recommended factors present to develop a SAMP. Development of a SAMP requires significant financial and staff resources. Without additional financial resources, commitment of our current Regulatory Appropriation funds for such an effort in Arizona would result in a significant reduction in service to the regulated public across Arizona and Southern California.

Whetstone Ranch was a 15,550-acre project annexed into the City of Benson in 1993. Whetstone Partners, in conjunction with Pulte Homes, proposed development of an 8,200-acre master planned community within the boundaries of the larger project area. In May 2014, El Dorado Holdings purchased all undeveloped land within the larger project area, including the 8,200-acre master-planned community, and renamed the large project area Villages at Vigneto. El Dorado Holdings is the transferee of the Department of the Army permit ("DA permit"). DA permit 2003-00826-SDM, issued in 2006, authorized discharges of dredged or fill material into waters of the United States associated with development of the 8,200-acre master-planned community. The current time limit for completing the authorized discharges ends on June 30, 2026. Prior to issuing the permit in 2006, the Corps completed all reviews and consultations as required by law and concluded the federal action would not have a significant impact on the human environment. No listed species or designated critical habitat occurred within the Corps' identified action area. The City of Benson may be reviewing a larger area for planning of utilities and roads; however the current Corps permit only covers the original 8,200-acre master planned community. Any additional proposals to discharge dredged and/or fill material into waters of the United States would need to be reviewed and permitted.

The Corps' regulations at 33 C.F.R. § 325.7 provide for reviewing a decision in which circumstances have changed. I and my regulators are in process of gathering information and reviewing the circumstances and conditions of the prior permit in accordance with applicable laws and regulations, within our Regulatory authority. We are aware of the presence of newly listed species and proposed critical habitat within the compensatory mitigation site associated with the DA Permit. We are evaluating the effects of the federal action on such species and proposed critical habitat to determine whether ESA section 7 consultation is required.

If you have further questions, you may contact me at (213) 452-3961, or your staff may contact Mr. David Castanon, Chief of the Los Angeles District's Regulatory Division, at (213) 452-3406 or via email at David.J.Castanon@usace.army.mil.

Sincerely,



Kirk E. Gibbs
Colonel, US Army
Commander and District Engineer